

Human Services Board, Meris Bergquist, Wendy Burroughs, and Joan Bauer

Shelley Simpson, Hearing Officer

March 20, 1996

Fair Hearing No. 13,959

INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare denying her Medicaid based on a finding that she is not disabled.

PROPOSED FINDINGS OF FACT

1. The petitioner is a sixty-four-year-old woman who has a master's degree in social work. Prior to 1991, the petitioner was a psychiatric social worker at a mental health agency and a homeless shelter where

she did primarily "desk work" but was obliged to drive and "go into the field" on a regular basis. In August of 1991, she started working on a per diem basis for a visiting nurse organization as an in-home attendant. As part of that job she was required to assist patients with their every day needs including the preparation of meals. She was not required to lift more than ten pounds or do any housework. Sometimes she slept in a patient's home overnight to assist in ambulation to the bathroom. She was terminated from that employment in August of 1994, because she was "never available for work". Subsequent to that employment, the petitioner did similar work for a council on aging and a hospital patient-sitting program on a part-time, on-call basis. On her last job in March of 1995, the petitioner worked six hours per week, for two hours every three days assisting a bedridden cancer patient. She monitored the medications of the patient and did not have many physical requirements. She was able to stand or sit at will. Her employer reports there were "several" times when she was unable to do that job because she was ill, although the "illness" is unspecified. During the first quarter of 1995 (January, February and March), she worked a total of 81.5 hours and earned \$652. The petitioner tried to get more hours during this time, but the funding for the program was reduced.

2. On April 2, 1995, the petitioner was hospitalized as the result of burns to her skin and corneas from a fire in her apartment. Her injuries have since resolved and she has no residual problem as a result of that fire. Her vision is still intact.

3. On May 1, 1995, the petitioner applied for Medicaid on the basis of her burns from the fire and arthritis in her left knee and right hip. She described herself as being weak and visually impaired for 2-3 weeks due to the fire.

4. The medical evidence shows that the petitioner has some residual weakness in her knee as the result of a patella fracture several years ago. Her physicians have described her fracture as well healed and on X-ray exam have found only "mild degenerative joint disease". She has a good range of motion and minimal functional trouble with that joint.

5. The petitioner has had some surgery on her left hip over the last two years and has pins in her hip. She has occasional pain in that hip upon extremes of motion and when she sits with her knees bent for a prolonged period (30-45 minutes) of time. The pain in her hip has increased over the last year.

6. The petitioner can ambulate short distances without assistance but must use a cane when putting a lot of stress on her hip, such as in stair climbing and walking for long distances. She also has difficulty running or walking on ice and snow. Neither can she stand for long period of time without frequently sitting down to rest.

7. The petitioner cooks her own meals, does her own housework, including vacuuming from a chair, so long as she can alternate periods of activity with periods of rest. She can ride in a car but gets pain in her back after traveling for more than fifteen minutes. The petitioner has no prescription medications for pain but takes Tylenol III occasionally for relief of her pain.

8. The petitioner claims that she is limited by her pain from doing any kind of work for more than twelve to sixteen hours per week in three to four hour shifts on non-consecutive days. However, that assertion is not supported by the medical evidence regarding her hip and knee pain which show very mild problems of long duration, through which she has worked in the past and which do not significantly limit her ability to move her joints and do her daily chores. The medical evidence is also devoid of any ongoing effort to seek relief from pain. The petitioner has some restrictions due to her hip

and knee pain but it must be concluded that she is still physically capable of lifting up to ten pounds and alternately standing, walking and sitting for a six to eight hour period during the day.

9. The evidence indicates that the petitioner has chronic alcohol dependence. She has gone to AA meetings and sought counseling in the past, but apparently has little insight into her condition. The evidence indicates that alcoholism has caused her trouble in the past, including suspension of her license and, possibly, the fire in her apartment after which time she was found to have had a very high blood alcohol level. A report from a mental health counselor who saw the petitioner for another problem stated: . . .

At first she presented as if alcohol was a problem in the past and no longer a concern. When she did drink she would rationalize it and minimize the part it might play in the problem at hand. I only saw [petitioner] for ten sessions but at least two of those sessions she came clearly smelling of alcohol. When I confronted her she intellectualized the positive and negatives of drinking. . . .

Though she could clearly identify feelings that would lead to drinking she could not see how the drinking was compromising her health, safety and abilities. She was very proud, a person who certainly wanted to carry her own weight. She had done it in the past and planned to continue. Alcoholism can often distort a person's self image and I believe [petitioner] saw herself as physically stronger than she was. However she was very strong both mentally and emotionally, though that played a part in the denial of her disease. [Petitioner] stopped coming to see me soon after I confronted her drinking. I have not seen her since.

. . .

10. While it can be concluded from the above report that alcoholism does "compromise" the petitioner's health and abilities, the petitioner has offered no testimony or other evidence which would indicate to what extent her ability to work may have been compromised by that problem. There is nothing in her testimony or any of the evidence that seeks to connect her recent part-time work history, terminations or absences with her alcoholism. Neither did she offer any evidence as to the severity of her problem or show that her condition is resistant to treatment. Given that lack of evidence, it must be concluded that the petitioner has failed to show that her alcoholism significantly impacts on her ability to work and that it is uncontrollable.

RECOMMENDATION

The decision of the Department should be affirmed.

REASONS

Medicaid Manual Section M 211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional

capacity, age, education, and work experience is considered.

The petitioner is a person who is capable of performing "sedentary" work as that term is defined in the regulations:

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 C.F.R. 416.967(a)

Although the petitioner has severe vocational limitations based upon her restriction to sedentary work and her closeness to retirement age, ⁽¹⁾ she has a high level of education in a skilled occupation which should allow her to still engage in substantial gainful activity. See Rules 201.07 and 201.08, Appendix 2, Subpart P, 20 C.F.R. § 404. In fact, there is no reason to conclude that the petitioner cannot return to her most recent occupation as an in-house medical attendant. The decision of the Department should be affirmed.

THIS MATTER WILL BE CONSIDERED BY THE BOARD AT A MEETING IN MONTPELIER ON WEDNESDAY, MARCH 27, 1996. THE MEETING WILL BE HELD AT THE NATIONAL LIFE INSURANCE COMPANY - NORTH BUILDING (SEE ATTACHED MAP), IN THE TRANSPORTATION/MAINTENANCE CONFERENCE ROOM, 4TH FLOOR, AND WILL BEGIN AT 9:30 A.M., ALL VISITORS ARE REQUIRED TO SIGN IN AT THE FRONT DESK AS THEY COME INTO THE BUILDING. DIRECTIONS TO THE CONFERENCE ROOM WILL BE PROVIDED BY THE RECEPTIONIST AT THE FRONT DESK.

1. The petitioner will be eligible for Medicaid in August of 1996 based on her age alone.